

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

MASTER MECHANICAL, INC.,)
a Delaware Corporation,)
) C.A. No. 08L-12-055 (JTV)
Plaintiff,)
)
v.)
)
SHOAL CONSTRUCTION, INC.,)
a Delaware Corporation, LINKSIDE)
TOWNHOMES, LLC, a Delaware Limited)
Liability Company, RJZ INVESTMENT)
TRUST, TJZ INVESTMENT TRUST, and)
MICHAEL B. STEVENS and GRACE A.)
HARMON)
)
Defendants.)

Submitted: February 27, 2009

Decided: May 29, 2009

Matthew S. Lindauer, Esq. & Ellen J. Feinberg, Esq., Smith O'Donnell Feinberg & Berl, LLP, Georgetown, Delaware. Attorneys for Plaintiff.

Patrick M. McGrory, Esq. & Paul Cottrell, Esq., Tighe & Cottrell, Wilmington, Delaware. Attorneys for Defendant Shoal.

Constantine F. Malmberg III, Esq., Young, Malmberg & Howard, P.A., Dover, Delaware. Attorney for Defendants Linkside Townhomes, LLC, RJZ Investment Trust, TJZ Investment Trust, Michael B. Stevens and Grace A. Harmon.

Upon Consideration of Defendant Shoal's

Motion to Dismiss

DENIED

VAUGHN, President Judge

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ORDER

Upon consideration of the Defendants' motion to dismiss, the Plaintiff's response and the record of the case, it appears that:

1. Defendant Shoal Construction, Inc. has filed a motion to dismiss the complaint, in which the other Defendants have joined. The motion to dismiss comes before the filing of any answers. The Plaintiff's complaint consists of a complaint and a statement of claim for mechanics' lien. The mechanics' lien is sought against various townhouse units in a development known as Linkside Townhomes. *In personam* judgments are sought against the general contractor and various unit owners.

2. Superior Court Civil Rule 12(b) provides that defenses should be asserted in a responsive pleading, with seven exceptions which may be asserted in a Rule 12(b) motion in lieu of a responsive pleading. The filing of a 12(b) motion defers the filing of an answer until the Court has acted in some manner upon the motion. The motion in this case does not expressly identify which of the seven defenses it asserts, but two seem to be implicit – dismissal for failure to state a claim upon which relief can be granted, and dismissal for failure to join a party under Superior Court Civil Rule 19. Therefore, I will treat the motion as one to dismiss on those grounds.

3. Upon a motion to dismiss for failure to state a claim upon which relief can be granted, a complaint is subjected to a broad test of sufficiency.¹ Dismissal is appropriate only if it is reasonably certain "that the plaintiff could not prove any set

¹ *C & J Paving, Inc. v. Hickory Commons, LLC*, 2006 WL 3898268 (Del. Super. Jan. 3, 2007).

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of facts that would entitle him to relief."² The complaint will not be dismissed unless it clearly lacks factual or legal merit.³ When considering a motion to dismiss, the Court will accept all well-pleaded allegations as true.⁴ In addition, every reasonable factual inference will be drawn in favor of the plaintiff.⁵ The standard for dismissal for failure to join persons needed for just adjudication is set forth in Rule 19, which I hereby incorporate by reference.

4. The law in Delaware is well settled that the mechanics' lien statute requires strict compliance from those seeking a lien.⁶ "The idea behind strict construction of mechanics' liens complaints and intolerance for deficiencies in them is that the mechanics' lien statute is in derogation of the common law."⁷ Strict construction, however, does not require an unreasonable or unwarranted construction of the statute.⁸ The validity of a mechanics' lien "depends upon an affirmative demonstration that each statutory prerequisite for the creation of such an encumbrance has been

² *Ramunno v. Crawley*, 705 A.2d 1029, 1034 (Del. 1998) (citing *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978)).

³ *Diamond State Tel. Co. v. Univ. of Del.*, 269 A.2d 52, 58 (Del. 1970).

⁴ *Spence*, 396 A.2d at 968.

⁵ *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005).

⁶ *Builder's Choice v. Venzon*, 672 A.2d 1, 2 (Del. 1996).

⁷ *Constr. by Franco v. Reed*, 1994 WL 750306, at *1 (Del. Super. Ct. Dec. 12, 1994).

⁸ *Pittman-Berger Co. v. Parkinson*, 180 A. 645, 648 (Del. 1935). See also *Joseph Rizzo & Sons v. Christina Momentum, L.P.*, 1992 WL 51850, at *5 (Del. Super. Ct. Feb. 21, 1992) ("The mechanics' lien provisions should be strictly, but not unreasonably, construed.").

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followed."⁹

4. As to Defendant Shoal, it is readily apparent that the motion to dismiss must be denied. The complaint alleges that the Plaintiff made its contract with Defendant Shoal and asserts a breach of contract claim against that Defendant. The Plaintiff alleges the making of a contract with Defendant Shoal, a breach of that contract, and damages. Those allegations are adequate to survive a motion to dismiss as against that Defendant.

5. The Defendants contend that the statement of claim for mechanics' lien and the complaint for *in personam* judgments against the unit owners should be dismissed for the following reasons: that the exhibits to the complaint include references to and information concerning units upon which the plaintiff does not seek a mechanics' lien (lots 84-90), which, they contend, creates a discrepancy as to the amount claimed; that the statement of claim does not include a bill of particulars; that the statement of claim fails to name the owners at the time of the contract and fails to name all current owners; that the Plaintiff has failed to name the present owners of the structures in the caption of the complaint; that the Plaintiff fails to identify the real property where the labor or materials were supplied; that the Plaintiff fails to apportion the claim between two or more structures; that the Plaintiff fails to file the claim within the deadline prescribed by statute; and that the Plaintiff fails to state that the labor and material were supplied on the credit of the structures named.

6. After carefully considering the Defendants' contentions, I find that the arguments concerning lots 84-90 are not defects in the complaint and statement of

⁹ *Builder's Choice*, 672 A.2d at 4.

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claim for mechanics' lien which call for dismissal. I also conclude that the record does not support dismissal under Rule 19.

7. A bill of particulars serves to "inform the defendants of the basis for the plaintiff's claim."¹⁰ It should "be a detailed statement of the facts and must set forth the facts upon which plaintiff bases his claim with sufficient particularity that the interested parties can have no doubt as to the details of the claim."¹¹ When parties have contracted for labor and materials to be collected as a lump sum, an itemized list of charges is unnecessary.¹² I am persuaded that Exhibit H and the contracts which set forth a unit price at Exhibits F and G constitute a sufficient bill of particulars to avoid dismissal.

8. The defendants' remaining contentions appear to go to the issue of a single lien against individual structures of a housing development, which is not permitted, versus a joint claim for two or more separate liens against separate structures, which is. For purposes of testing the sufficiency of the complaint and statement of claim for mechanics' lien, I am satisfied that the statement of claim sufficiently sets forth the amount claimed for each unit and otherwise sufficiently complies with the statute's

¹⁰ *Deluca v. Martelli*, 200 A. 2d 825, 826 (Del. Super. 1964). *See also Capossere v. Levine*, 2008 WL 484442, at *3 (Del. Super. 2008) (Ct. found the plaintiff's offering of agreement dates, work type, labor and material costs and memorializing invoices provided sufficient notice to the defendant).

¹¹ *Id.* (citing *Thomas v. Goldhahn*, 156 A. 363, 364 (Del. Super. 1929)).

¹² *Rizzo & Sons v. Christina Momentum, L.P.*, 1992 WL 51850, at *4 (Del. Super. Ct. 1992) (citing *Mayor & Council of Wilmington v. Recony Sales & Eng'g*, 185 A.2d 68, 69 (Del. 1962)); *see also Taylor v. Brentwood Constr. Co.*, 189 A.2d 414, 416 (Del. 1963) (Ct. held plaintiff's statement of claim with amount of the entire job met statutory requirement).

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requirements to survive a motion to dismiss.

9. Therefore, the motion to dismiss is ***denied***. The Defendants should file answers within the time required by the Rules. This order is entered without prejudice to the Defendants to raise these issues in their answers or in a subsequently filed motion for summary judgment.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

oc: Prothonotary
cc: Order Distribution
File